

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE PROTEST OF
LEONORA D. LORENZO
TO ASSESSMENT OF PERSONAL INCOME
TAX ISSUED UNDER LETTER ID L0476768512**

No. 07-01

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on January 24, 2007 before Margaret B. Alcock. The Taxation and Revenue Department (“Department”) was represented by Elizabeth K. Korsmo. Leonora D. Lorenzo appeared on her own behalf. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Leonora Lorenzo was a resident of New Mexico in 1998, but did not file a federal or state income tax return for that year.
2. In February 2004, the Internal Revenue Service (“IRS”) notified Ms. Lorenzo that it had conducted an examination of her tax reporting and determined that she failed to report the following income to the federal government for the 1998 tax year: \$74 of interest, \$2,652 of dividends, \$10,898 of taxable distributions, and \$8,321 of stock sales.
3. After crediting Ms. Lorenzo with allowable deductions and exemptions, the IRS determined that her taxable income for the 1998 tax year was \$14,995, resulting in a federal tax liability of \$3,335.80.
4. In June 2006, based on information received from the IRS, the Department assessed Ms. Lorenzo for \$455.00 of New Mexico personal income tax for the 1998 tax year, plus interest and penalty.

5. On August 14, 2006, Ms. Lorenzo filed a written protest to the assessment. Her protest was further supplemented by documents dated October 16, 2006 and January 12, 2007.

DISCUSSION

The issue to be determined is whether Leonora Lorenzo is liable for New Mexico personal income tax on her 1998 income. Ms. Lorenzo has raised a number of arguments challenging the Department's administrative hearing process and the legal basis for the Department's assessment. Each of these arguments is addressed below.

ARGUMENTS RAISED CONCERNING THE ADMINISTRATIVE HEARING PROCESS. NMSA 1978, § 7-1-24(D) provides: "Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest or claim." Pursuant to § 7-1-24(E), administrative hearings on tax protests are to be conducted by a hearing officer designated by the secretary of the Taxation and Revenue Department. Despite these clear statutory directives, Ms. Lorenzo raises the following objections to the hearing officer's authority to conduct an administrative hearing to consider the merits of her protest.

(1) Surety Bonds. Ms. Lorenzo challenges the hearing officer's authority to conduct administrative hearings based on the fact that neither the hearing officer nor the Department secretary has filed a surety bond with the New Mexico Secretary of State. NMSA 1978, §§ 10-2-1 through 10-2-12 set out the qualifications and restrictions for bonds of public officers that are "executed by any individual, or firm as surety..." Sections 10-2-5, 10-2-6, and 10-2-7 require that all such bonds be recorded with and maintained by the office of the secretary of state. Ms. Lorenzo asserts that these provisions govern surety bond coverage for the Department secretary and employees. Upon a review of all relevant state statutes, however, it

becomes clear that the requirements of §§ 10-2-1 to 10-2-12 are not applicable to state officers and employees. Instead, the Surety Bond Act, NMSA 1978, §§ 10-2-13 through 10-2-16, provides the exclusive form of coverage for such individuals. Section 10-2-15(A) of that Act provides:

A. The [general services] department shall provide surety bond coverage for all employees. Whenever an employee is required by another law to post bond or surety as a prerequisite to entering employment or assuming office, the requirement is met when coverage is provided for the office or position under the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].
Notwithstanding any other provisions of law, no state agency or employee shall purchase any employee surety bond other than pursuant to the provisions of the Surety Bond Act. (emphasis added)

This statute evidences a clear legislative intent to limit surety bond coverage for state officers and employees to the coverage provided in the Surety Bond Act. *See also*, New Mexico Attorney General Opinion 87-42. This coverage is not the same as the coverage identified in NMSA 1978 §§ 10-2-1 through 10-2-12, which is issued by an “individual or firm as surety.” The coverage required by the Surety Bond Act is a form of self-insurance issued by the General Services Department of the State of New Mexico. Nothing in the Surety Bond Act requires—or allows—the Department’s cabinet secretary or employees to obtain individual surety bonds or to file such bonds with the secretary of state.

Ms. Lorenzo maintains that the Surety Bond Act is invalid. Although her argument is somewhat difficult to follow, it appears to be based on a misreading of Article XIX, section 4 of the New Mexico Constitution, which provides:

When the United States shall consent thereto, the legislature, by majority vote of the members in each house, may submit to the people the question of amending any provision of Article XXI of this constitution on compact with the United States to the extent allowed by the act of congress permitting the same, and if a majority of the qualified electors who vote upon any such amendment shall vote in favor thereof the said article shall be thereby amended accordingly.

and Article XXI, section 10 of the state constitution, which provides:

This ordinance is irrevocable without the consent of the United States and the people of this state, and no change or abrogation of this ordinance, in whole or in part, shall be made by any constitutional amendment without the consent of Congress.

Ms. Lorenzo seems to believe that these sections prohibit the New Mexico legislature from enacting any laws that amend or supercede the territorial laws in effect when New Mexico became a state, including laws pertaining to the filing of surety bonds. This is incorrect. The constitutional provisions cited by Ms. Lorenzo set out the requirements for amending the New Mexico Enabling Act, which is embodied in Article XXI of the state constitution. The cited passages do not restrict the Legislature's authority to amend territorial laws or to change the method by which state officials and employees are required to satisfy requirements for posting bond.

(2) *Hearing Officer Bias.* Ms. Lorenzo argues that the hearing officer's status as an employee of the Department nullifies the administrative hearing process. There is no merit to this argument. As the New Mexico Court of Appeals found in *Kmart Properties, Inc. v. Taxation & Revenue Department*, 2006-NMCA-26, ¶ 19, 139 N.M. 177, 131 P.3d 27, *reversed in part on other grounds, Kmart Corporation v. Taxation and Revenue Department*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22: "It is well-established that due process is not violated by having hearing officers who are employed by an agency adjudicating cases in which that agency is a party." *See also, Wing Pawn Shop v. Taxation & Revenue Department*, 111 N.M. 735, 743, 809 P.2d 649, 657 (Ct. App. 1991).

Ms. Lorenzo also takes exception to the statement in the Request for Hearing that settlement possibilities in this case were "low," concluding that the hearing officer prejudged

the taxpayer's protest prior to the hearing. Ms. Lorenzo fails to understand that the Request for Hearing was prepared by the Department's attorney, not by the hearing officer, and simply indicates that the Department did not anticipate being able to reach an agreement with the taxpayer concerning the issues raised in her protest. For this reason, the Department's attorney requested that an administrative hearing be scheduled to resolve the matter.

(3) *Licensure of Attorneys.* Ms. Lorenzo challenges the authority of Elizabeth Korsmo, the Department's attorney, to represent the Department in this proceeding. In her January 12, 2007 supplemental protest, Ms. Lorenzo maintains that "Ms. Korsmo is NOT a licensed attorney as called for under the New Mexico Licensing Act...." The New Mexico Uniform Licensing Act does not apply to attorneys. *See*, NMSA 1978, § 61-1-2 (listing licenses covered by the Act). Pursuant to NMSA 1978, § 36-2-1, the practice of law in New Mexico is regulated by the New Mexico Supreme Court. In order to be licensed to practice law in this state, an applicant must take and pass the written examination administered by the Board of Bar Examiners. *See, generally*, Rules 15-101 through 15-304 NMRA (2006), Rules Governing Admission to the Bar. In addition, Rule 24-101 NMRA (2006) states that "all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of New Mexico in accordance with the rules of this court." In the 2006-2007 *Bench & Bar Directory* maintained by the State Bar of New Mexico, Ms. Korsmo is listed as an active member of the State Bar. Ms. Lorenzo has provided no evidence to indicate that Ms. Korsmo is not currently licensed to practice law in New Mexico or is otherwise disqualified from representing the Department in these proceedings.

ARGUMENTS RAISED CONCERNING TAX LIABILITY. Ms. Lorenzo raises the following arguments in support of her position that she is not liable for New Mexico personal income tax on her 1998 income.

(1) *Validity of Sixteenth Amendment.* Ms. Lorenzo maintains that the Sixteenth Amendment to the United States Constitution was never properly ratified and that, even if it were, nothing in the amendment permits Congress to impose a direct, nonapportioned tax on individuals. These arguments have been universally rejected by the courts. As the Ninth Circuit Court of Appeals noted in the case of *In re Becraft*, 885 F.2d 547, 548 (9th Cir. 1989): "For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a non-apportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens." *See also, Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990); *Miller v. United States*, 868 F.2d 236, 241 (7th Cir. 1989); *United States v. Stahl*, 792 F.2d 1438, 1440-1441 (9th Cir. 1986), *cert. denied*, 479 U.S. 1036 (1987); *Knoblauch v. Commissioner*, 749 F.2d 200, 201 (5th Cir. 1984), *cert. denied*, 474 U.S. 830 (1986); *Lovell v. United States*, 755 F.2d 517, 519 (7th Cir. 1984); *Broughton v. United States*, 632 F.2d 706, 707 (8th Cir. 1980).

(2) *Title 26 and Positive Law.* Ms. Lorenzo also argues that the Internal Revenue Code is invalid because Title 26 of the United States Code ("U.S.C.") is not positive law. This argument derives from the process by which statutes of the United States have been collected in the U.S.C. and reorganized by subject matter into "titles." In some cases, Congress has reenacted statutes relating to certain subjects in the same form as they appear in the U.S.C., which then qualify those titles of the U.S.C. as positive law. Other statutes codified in the

U.S.C.—including the tax statutes under Title 26—have not been formally reenacted. The only effect of this is to limit the version of the statutes appearing in the U.S.C. to *prima facie* evidence of the law. Should any discrepancy be found, the original version of the statute appearing in the United States Statutes at Large would control. As explained in *Tax Analysts v. Internal Revenue Service*, 214 F.3d 179, 183, n. 2 (D.C. Cir. 2000):

The United States Statutes at Large are “legal evidence” of the law, 1 U.S.C. § 112 (1994), whereas the titles of the United States Code only serve as “prima facie” evidence of the law unless they are enacted as “positive law,” in which case they too serve as legal evidence of the laws. 1 U.S.C. § 204(a) (1994); *see also* *Stephan v. United States*, 319 U.S. 423, 426, 63 S.Ct. 1135, 87 L.Ed. 1490 (1943) (per curiam) (Statutes at Large prevail over prima facie portions of U.S.C.). The I.R.C. has been enacted as a separate code and is therefore positive law. *See* Internal Revenue Code of 1954, ch. 736, 68A Stat. 1 (1954)....

The same conclusion was reached by the Ninth Circuit in *Ryan v. Bilby*, 764 F.2d 1325, 1328 (9th Cir. 1985):

Congress's failure to enact a title into positive law has only evidentiary significance and does not render the underlying enactment invalid or unenforceable. *See* 1 U.S.C. § 204(a) (1982) (the text of titles not enacted into positive law is only prima facie evidence of the law itself).

In short, there is no merit to Ms. Lorenzo’s argument that Congress’s failure to enact Title 26 of the U.S.C. into positive law invalidates the underlying tax laws passed by Congress or excuses her from compliance with those laws. *See also, Young v. Internal Revenue Service*, 596 F.Supp. 141, 149 (N.D. Ind. 1984) (even if Title 26 was not itself enacted into positive law, that does not mean that the laws under that title are null and void.); *United States v. Zuger*, 602 F.Supp. 889, 891-92 (D.Conn.1984) (the failure of Congress to enact a title as such and in such form into positive law in no way impugns the validity, effect, enforceability, or constitutionality of the laws), *aff’d. without op.*, 755 F.2d 915 (2d Cir.), *cert. denied*, 474 U.S. 805 (1985).

(3) *Compliance with the Paperwork Reduction Act.* Ms. Lorenzo maintains that the 1998 federal Form 1040 does not meet the requirements of the Paperwork Reduction Act of 1980 (“PRA”) and that this relieves her of any obligation to file a federal or state income tax return. The PRA, codified at 44 U.S.C. § 3501 *et seq.*, provides that the Office of Management and Budget (“OMB”) must assign a number to each form required by federal agencies for the collection of information and identify the agency regulation that requires the form to be filed. As part of its enforcement scheme, Congress included a “public protection” provision in 44 U.S.C. § 3512, which states:

Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved...does not display a current control number assigned by the [OMB] Director....

Ms. Lorenzo cites to this section in support of her argument that she is not liable for federal or state income tax because the OMB number that appears on federal Form 1040 is invalid. There are several problems with this argument.

First, Ms. Lorenzo has not introduced any evidence to establish what OMB number appears on the 1998 federal Form 1040 or why that number is invalid. In *Pond v. Commissioner of Internal Revenue*, 2007 WL 18928, 2 (10th Cir. 2007), the Tenth Circuit Court of Appeals disposed of a similar argument based on the petitioner’s failure to include any Form 1040s in the record: “With no support in the record for his petition of relief, we must deny his claim.”

Second, the only legal authority Ms. Lorenzo provided in support her contentions was an article from the web site of an organization known as “We the People.” The article reports that in May 2006, the U.S. attorney in Peoria, Illinois, moved to dismiss charges brought

against a criminal defendant who had raised the PRA/OMB issue as a defense. No decision was rendered on the merits of the defendant's case. On the other hand, there are several federal decisions rejecting the argument that § 3512 of the PRA relieves United States citizens from their statutory obligation under § 6012 of the Internal Revenue Code to report and pay federal income taxes. As the Ninth Circuit Court of Appeals concluded in *United States v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991):

The legislative history of the PRA and its structure as a whole lead us to conclude that it was aimed at reining in *agency* activity. See S.Rep. No. 930, 96th Cong.2d Sess., *reprinted in* 1980 U.S.C.C.A.N. 6241 (legislative history of PRA). Where an agency fails to follow the PRA in regard to an information collection request that the agency promulgates via regulation, at its own discretion, and without express prior mandate from Congress, a citizen may indeed escape penalties for failing to comply with the agency's request. See, e.g., *United States v. Hatch*, 919 F.2d 1394 (9th Cir.1990); *United States v. Smith*, 866 F.2d 1092 (9th Cir.1989). But where *Congress* sets forth an explicit statutory requirement that the citizen provide information, and provides statutory criminal penalties for failure to comply with the request, that is another matter. This is a legislative command, not an administrative request. The PRA was not meant to provide criminals with an all-purpose escape hatch. (Emphasis in the original).

See also, *United States v. Wunder*, 919 F.2d 34, 38 (6th Cir. 1990) (the requirement to file a tax return is mandated by statute and not by regulation); *United States v. Neff*, 954 F.2d 698, 699-700 (11th Cir. 1992) (Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress); *Gossner Foods, Inc. v. EPA*, 918 F.Supp. 359, 365-66 (D. Utah 1995) (PRA § 3512 defense is not available for failure to comply with statutory obligation to file toxic chemical release inventory form); *Springer v. United States*, 447 F.Supp.2d 1235, 1238-1239 (N.D. Okla. 2006) (plaintiff's PRA argument had insufficient merit to qualify for the judicial exception to the Anti-Injunction Act).

Finally, it must be recognized that New Mexico's assessment of state income tax cannot be characterized as a penalty for failing to file a federal Form 1040. Accordingly, § 3512 of the PRA has no application to the current proceeding.

(4) *Compliance With Federal Disclosure Requirements.* 26 U.S.C. § 6103(d)(1) authorizes the IRS to disclose information to any state agency charged with responsibility for the administration of state tax laws

only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission.

In this case, the IRS's disclosure of information concerning Ms. Lorenzo was made under the terms of a 1988 Implementation Agreement to the Agreement on Coordination of Tax Administration Between the New Mexico Taxation and Revenue Department and the Internal Revenue Service, a copy of which was admitted as Department's Exhibit A. Although Ms. Lorenzo argues that the agreement's general authorization for the exchange of information does not qualify as a "written request" under the statute, federal courts have consistently held that the standard-form coordination and implementation agreements the IRS has entered into with each of the 50 states meet the disclosure requirements of § 6103(d). *Smith v. United States*, 964 F.2d 630 (7th Cir. 1992), *cert. denied*, 506 U.S. 1067 (1993); *Taylor v. United States*, 106 F.3d 833 (8th Cir. 1997); *Long v. United States*, 972 F.2d 1174 (10th Cir. 1992); *Stone v. Commissioner*, T.C. Memo 1998-314 (U.S. Tax Court Memos 1998).

Even if the IRS's disclosure of Ms. Lorenzo's tax information did not meet federal statutory requirements, this is not the appropriate forum in which to raise that issue. Instead, Ms. Lorenzo's remedy is found in 26 U.S.C. § 7431, which creates a federal cause of action for

the improper disclosure of an individual's return information. Suppression of such information is not one of the remedies provided in § 7431. *See, Nowicki v. Commissioner*, 262 F.3d 1162, 1163 (11th Cir. 2001) (imposition of the exclusionary rule is not warranted for a disclosure of return information which violates § 6103). *See also, United States v. Orlando*, 281 F.3d 586, 595-596 (6th Cir. 2002). There is no legal authority to support the argument that improper disclosure under § 6103 warrants abatement of a state tax assessment.

(5) *New Mexico's Authority to Determine of Liability.* Ms. Lorenzo argues that New Mexico cannot assess her for state income tax because there has been no final determination of her federal tax liability. It is settled law in New Mexico, however, that states have the authority to impose and administer state taxes independently of any action by the IRS. *See, Holt v. New Mexico Department of Taxation & Revenue*, 2002-NMSC-34, ¶ 9, 133 N.M. 11, 59 P.3d 491 (“the State of New Mexico has the authority to assess and collect taxes without federal supervision”).

(6) *Information Contained in the RAR.* Ms. Lorenzo maintains that the information the Department received from the IRS is not reliable because the IRS notices were not signed under penalty of perjury as required by 26 U.S.C. § 6065. That section states as follows:

§ 6065. Verification of returns.

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

In *Morelli v. Alexander*, 920 F. Supp. 556, 558 (S.D.N.Y. 1996), the federal court held that § 6065 applies to tax returns and other documents filed by taxpayers, not to notices issued by the IRS. As the court explained:

Morelli argues that the Agents violated their duty under 26 U.S.C. § 6065 by failing to sign the notices that they sent to Morelli.... Morelli has incorrectly interpreted this provision. Section 6065 was enacted to permit the taxpayer to submit a verified return rather than a notarized return, *see, e.g., Cohen v. United States*, 201 F.2d 386, 393 (9th Cir.) (construing § 6065's predecessor provision), *cert. denied*, 345 U.S. 951, 97 L. Ed. 1374, 73 S. Ct. 864 (1953), and does not apply to notices issued by IRS agents.

See also, Nordbrock v. United States, 173 F.Supp.2d 959, 972-973 (D. Ariz. 2001) (§ 6065 does not require that a lien or other notice issued by the IRS be verified by a written declaration that it is made under penalty of perjury); *Thompson v. IRS*, 23 F.Supp.2d 923, 925 (D. Ind. 1998) (the verification provision of § 6065 does not apply to notices issued by IRS agents); *Cermak v. United States*, 1997 U.S. App. Lexis 13706 (7th Cir. 1997) (the phrase “required to be made” limits the applicability of § 6065 to documents that must be filed with the IRS, and not documents issued by the IRS); *McCandless v. United States*, 2002 U.S. Dist. Lexis 21464 (N.D. Cal. 2002) (the verification requirement in 26 U.S.C. § 6065 applies to taxpayers, not the IRS); *Kaetz v. IRS*, 2002 U.S. Dist. Lexis 14471 (D. Pa. 2002) (§ 6065 does not apply to notices issued by the IRS). There is no authority supporting Ms. Lorenzo’s position that the notices and other information provided by the IRS are invalid because they were not signed under penalty of perjury.

In any event, if Ms. Lorenzo believes that the Department’s assessment of personal income tax is based on inaccurate information, it is her obligation to correct the error by producing her 1998 financial records for review. NMSA 1978, § 7-1-17(C) states that any assessment of taxes made by the Department is presumed to be correct, and the burden is on the taxpayer to overcome this presumption. *See also, Holt v. New Mexico Department of Taxation & Revenue*, 2002-NMSC-34, ¶ 4, 133 N.M. 11, 59 P.3d 491. Contrary to the position taken by Ms. Lorenzo, a taxpayer cannot shift the burden of proof to the Department simply by asserting: “I

challenge your ‘presumption of correctness.’” See, January 12, 2007 supplemental protest. In *Grogan v. New Mexico Taxation & Revenue Department*, 2003-NMCA-33, ¶ 12, 133 N.M. 354, 62 P.3d 1236, the court stated:

The Department's assessment is presumed to be correct. NMSA 1978, § 7-1-17(C) (1992); *Carlsberg*, 116 N.M. 247 at 249, 861 P.2d at 290. "The effect of the presumption of correctness is that the taxpayer has the burden of coming forward with some countervailing evidence tending to dispute the factual correctness of the assessment made by the secretary. *Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness.*" 3.1.6.12(A) NMAC 2001. (Emphasis added).

In this case, Ms. Lorenzo has the most accurate and direct knowledge concerning the nature and source of her income during the 1998 tax year. By failing to provide any evidence to show that the income figures the Department received from the IRS are incorrect, she failed to meet her burden of proof on this issue.

ARGUMENTS BASED ON PERSONAL BELIEFS. Finally, Ms. Lorenzo raises a number of arguments based on her personal beliefs as set out in her “Sacred Affidavit of Truth” and “Declaration of Expatriation and Spiritual Independence.” These arguments are beyond the scope of this administrative proceeding and will not be addressed. It should be noted, however, that the United States Supreme Court has rejected the argument that a taxpayer’s religious beliefs can serve as a defense to nonpayment of federal taxes:

The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief. [citations omitted] Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax.

United States v. Lee, 455 U.S. 252, 260 (1982). See also, *Hernandez v. Commissioner of Internal Revenue*, 490 U.S. 680, 699-700 (1989); *Adams v. Commissioner of Internal Revenue*, 170 F.3d 173 (3d Cir. 1999); *Browne v. United States*, 176 F.3d 25 (2d Cir. 1999); *Packard v.*

United States, 7 F.Supp.2d 143, (D.Conn. 1998), *aff'd in unpublished decision*, 198 F.3d 234 (2d Cir. 1999), *cert. denied*, 529 U.S. 1068 (2000).

CONCLUSIONS OF LAW

A. Leonora Lorenzo filed a timely, written protest to the assessment of personal income tax, interest and penalty issued under Letter ID No L0476768512, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Surety Bond Act, NMSA 1978, §§ 10-2-13 through 10-2-16, provides the exclusive form of coverage for state officers and employees and does not require such individuals to file a surety bond with the New Mexico Secretary of State.

C. Due process is not violated by having hearing officers who are employed by an agency adjudicating cases in which that agency is a party.

D. The Department's attorney was properly licensed to practice law by the New Mexico Supreme Court and is authorized to represent the Department in administrative proceedings.

E. The Sixteenth Amendment to the United States Constitution was properly ratified and authorizes a non-apportioned direct income tax on United States citizens residing in the United States.

F. The fact that Title 26 of the U.S.C. has not been enacted into positive law does not invalidate the federal tax laws enacted by Congress or excuse Ms. Lorenzo from compliance with those laws.

G. The State of New Mexico has the authority to make its own determination, independently from the Internal Revenue Service, as to whether state residents are properly reporting and calculating income taxes due to the state.

H. Section 3512 of the Paperwork Reduction Act does not excuse Ms. Lorenzo from reporting and paying New Mexico personal income tax on her 1998 income.

I. Information concerning Ms. Lorenzo's 1998 income was properly disclosed to the Department by the Internal Revenue Service.

J. There is no requirement that information transmitted by the IRS to state taxing authorities be signed by an IRS agent under penalty of perjury.

K. Ms. Lorenzo failed to meet her burden of proving that the information the Department received from the IRS concerning her 1998 income is incorrect.

L. Ms. Lorenzo is liable for the tax, penalty and interest assessed against her under Letter ID L0476768512.

For the foregoing reasons, Ms. Lorenzo's protest IS DENIED.

DATED February 5, 2007.